

15 June 2006

Screening report

Croatia

Chapter 29 – Customs Union

Date of screening meetings:

Explanatory meeting: 31 January – 1 February 2006

Bilateral meeting: 15 – 16 March 2006

I. CHAPTER CONTENT

The customs union *acquis* consists almost exclusively of legislation which is directly binding on the Member States. It includes the EU Customs Code and its implementing provisions, the combined nomenclature, common customs tariff and provisions on tariff classification, customs duty relief, duty suspensions and certain tariff quotas, and other provisions such as those on customs control of counterfeit and pirated goods, drugs precursors, export of cultural goods as well as on mutual administrative assistance in customs matters and transit. Member States must ensure that the necessary implementing and enforcement capacities, including links to the relevant EU computerised customs systems, are in place. The customs services must also ensure adequate capacities to implement and enforce special rules laid down in related areas of the *acquis* such as external trade.

The *acquis* consists mainly of a number of instruments ensuring the functioning of the customs union and the effective protection and control of its external borders. Without the Community's Customs Union, the European Union's common commercial and development policy, its common agricultural market and an effective co-ordination of economic and monetary policies would not be possible.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Croatia and the discussions at the screening meeting. Croatia indicated that it can accept the *acquis* regarding Customs Union. Croatia indicated that it does not expect any difficulties to implement the *acquis* by accession.

II.a. Customs legislation

General customs rules and procedures

The fundamental acts of the customs legislation of Croatia are the Customs Act, adopted in 1999 and last amended in 2005; the Regulation implementing the Customs Act; and the Rules on use of forms for the implementation of the Customs Act. Amendments to the Customs Act entered into force in January 2006. Amendments to the Regulation implementing the Customs Act (in accordance with the amended Customs Act) are in the Government adoption procedure. Due to the further alignment with the customs legislation of the EU, further amendments to the Customs Act and the Regulation implementing the Customs Act are expected by the end of 2006.

The customs territory of Croatia consists of the territory of the Republic of Croatia, including 15 free zones.

Goods brought into the customs territory of Croatia are subject to customs supervision measures and customs verification from the moment of their entry. Goods remain under customs supervision as long as it is deemed necessary in order to determine their customs status. Foreign goods acquire status of domestic goods by release for free circulation and payment of debt.

General rules also cover presentation of goods to customs, summary declaration, temporary storage of goods, as well as customs-approved treatment or use. There are also provisions on the declarant, who is defined as being the person who lodging the customs declaration in his own name or the person in whose name a customs declaration is lodged.

The customs declaration in writing shall be lodged on Single Administrative Document (SAD) form.

Cultural goods

The legal basis in this field is the Act on the protection and preservation of cultural goods, adopted in 1999 and last amended in 2003. The Ministry of Culture is the competent authority for issuing export licences for cultural goods. In Croatia there are registered cultural goods and preventively protected cultural goods (type 1), as well as other goods of cultural interest (type 2) which are not protected as cultural goods. The export of type 1 goods is allowed only as an exception (for the purpose of exhibition, expertise, conducting protection and preservation of the cultural good or any other justified reason) and with the approval and issued export licence of the competent authorities. When type 2 goods are taken out, certificate for permanent or temporary export of goods of cultural interest from Croatia is issued to the applicant for the export, which simplifies the border control.

Croatia has to a great extent aligned its national legislation to Council Regulation 3911/92 on the export of cultural goods and its implementing provisions (Commission Regulation 752/93).

Cash control at the borders

The Croatian legislation in this field consists of the following elements (see also chapter 4 – free movement of capital):

- the 2003 Act on foreign exchange;
- the 2003 Decision on governing the taking in and out of the country cash, checks and materialized securities;
- the 1997 Act on money laundering, as last amended in 2003);
- the 2001 Act on customs service.

Foreign cash and cheques denominated in foreign currency may be brought without restriction into the Republic of Croatia, subject to declaration when the amount exceeds 40,000 Croatian Kuna (HRK) (i.e. €5,500).

For the taking out of foreign cash and cheques denominated in foreign currency, the rules differ depending on whether residents or non residents are concerned:

- resident natural persons may take out of Croatia in international passenger traffic €3,000 worth of foreign cash and cheques, and for any amounts in excess of this limit an approval shall be obtained from the Croatian National Bank (such approval is granted for example for permanent emigration of the resident);
- the taking out of foreign cash and cheques for non residents is free, on the condition that those amounts that are in excess of 40.000 HRK have been declared to a customs officer at entry and exit.

Natural persons (residents and non residents) in international passenger traffic may take out and into Croatia the amount of up to 15.000 HRK. Higher amounts can be taken out or into Croatia with the approval of the Croatian National Bank.

Customs status of goods / transit

The concept of "customs status of the goods", as defined under Article 4 of the Customs Act, covers:

- domestic goods, i.e. goods wholly obtained in Croatia or imported goods released for free circulation (this status is lost when goods leave the customs territory but is maintained when the goods are placed in free zone or under national transit);
- foreign goods, i.e. non-domestic goods.

A national transit procedure is applied for:

- foreign goods,
- domestic goods transported from one point within the customs territory to another within the same territory, across the territory of another State;
- domestic goods declared for export at an inland customs office.

Croatia is signatory of several international Conventions covering transit (International transport of goods by road – TIR Carnet, Temporary importation – ATA Carnet, Universal postal Convention).

Croatia has in the meantime sent a letter of interest in order to accede to the Common Transit Convention.

In the field of computerisation, as all customs offices are linked to the IT system, the national transit procedure can be carried out electronically. Work has begun for the preparation of the NCTS (New Computerised Transit System), which Croatia expects to be put into operation from 2008 onward.

Procedures with economic impact

As defined under Articles 96-168 of the Customs Act, there are five procedures with economic impact: customs warehousing, inward processing (suspension system and drawback system), processing under customs control, temporary importation and outward processing.

In order to apply for any of these procedures, a request on the prescribed form must be submitted to the competent customs office. On the basis of this request and according to the economic justifiability of the latter, the customs office grants the authorisation for the requested procedure. The applicant must submit the appropriate security instrument in order to cover a possible customs debt, which may be incurred if the provisions of the procedure, defined in the authorisation, are not respected.

Security aspects of the Customs Code

Although the amendments brought to the Community Customs Code are not yet in force in the Community, Croatia amended its Customs Act in December 2005, notably as regards:

- risk and risk management, including for the security aspects (risk management via the IT system is being tested since 2004);
- the status of "authorized economic operator" (i.e. reliable traders who may benefit from trade facilitation measures).

Counterfeit

(see also chapter 7 – intellectual property law)

The legal basis in this field is the Regulation implementing customs measures with goods infringing intellectual property rights, adopted in 2003, which transposes EC Regulation 3295/94 (including the January 1999 amendments). Croatia is working on the transposition of the new Community *acquis* (Regulation 1383/03).

Customs measures are set in motion upon application of the holder of the right or *ex officio*. An administration charge is paid on the application (until January 2006, 70 HRK and from January 2006 40 HRK) for a period of one year. If there exists a reasonable doubt that goods may infringe intellectual or industrial property rights, it is prohibited to release these goods into free circulation, to export or re-export them, to place those goods under a suspensive procedure or to bring them into a free zone or free warehouse. The Customs Administration can (but does not in practice) request the applicant to deposit security instruments for expenses that could be incurred in connection with the safeguarding and holding of goods until a valid court judgement is made.

Drug precursors

The legal basis in this field is the Act on combating narcotic drugs abuse, adopted in 2001, and the Act on chemicals, adopted in 2005 but of which the implementing regulation is still in preparation.

Croatia performs control on the 23 substances listed in the Vienna Convention, but the classification is not harmonized with the *acquis*.

The implementation of the provisions related to drug precursors is under the general competence of the Ministry of health and social welfare (MHSW), but some drug precursors fall under the competence of the Ministry of economy, labour and entrepreneurship (MELE).

Customs valuation

Croatia is applying the provisions of Article VII of the GATT and of the Agreement on implementation of Article VII of GATT since 1992. Furthermore, Croatia is a member of the WTO since November 2000.

Amendments to the Customs Act entered into force on January 2006. Amendments to the Regulation implementing the Customs Act (in accordance with the amended Customs Act) are in the Government adoption procedure. They include amendments to provisions on customs valuation.

The declaration of the customs value is done on a specific form, which is aligned on the "Declaration of particulars relating to customs value" (DV 1) used in the Community. The Croatian legislation provides for a dialogue between the importer and the customs officer in case of doubts of the latter as regards the value declared (under the transaction valuation method).

Customs classification and tariff

Classification of goods is made on the basis of the harmonised system and the combined nomenclature, to which subheadings of two digits have been added. The classification regulations adopted by the European Commission, as well as the explanatory notes, have been included in the administrative instructions distributed to customs officers.

Classification may take place prior to the importation (binding tariff information), upon declaration (on the single administrative document) or after import (in case of post clearance verification).

There is a simplified classification procedure for non-assembled or dismantled products, parts of which are imported in a number of shipments, into the heading/subheading of the final product.

Seven CN codes covering pharmaceutical products specified in annexes 3, 4, 5 and 6 of the Combined Nomenclature are subject to customs duty in the Croatian Customs tariff, contrary the relief from customs duty provided for in the Combined Nomenclature as regards pharmaceutical products.

The basic rate of duty is defined on the principle of the most-favoured-nation, which is applicable to the import of goods from the countries member of the World Trade Organisation, from countries with which Croatia has concluded agreements containing the most-favoured-nation tariff clause or from countries that apply this principle to goods imported from Croatia (the principle of reciprocity).

Tariff derogations include duty suspensions and tariff quotas. The tariff also includes the measures that apply in accordance to preferential agreements to which Croatia is party.

The TARIC (integrated Community tariff) cannot be implemented before accession, but activities are under way to prepare its implementation upon accession.

Duty relief

Duty relief is regulated by four legal instruments (notably the Customs Act and the Customs Tariff Act). Most of the grounds on which duty relief can be granted also exist in the Community *acquis* (Regulation 918/83).

Outside the customs legislation, relief from customs duty is also prescribed by:

- the 2001 Act on reconstruction and development of the town of Vukovar;
- the 2004 Act on rights of the Croatian homeland war veterans and their family members;
- the 2002 Act on defence;
- the 2002 Act on legal position of religious communities;
- the 2000 Act on investment promotion.

Rules of origin

The rules on non-preferential origin are contained in the provisions set forth in Articles 23 to 27 of the Customs Act. The status of non-preferential origin applies, on the one hand, to wholly obtained products and, on the other hand, to sufficiently worked or processed products (i.e. when there is a change of tariff heading or when the value of non-originating material does not exceed 50% of the price of the finished product).

Preferential rules of origin are contained in the Stabilisation and Association Agreement between the Republic of Croatia and the EU, as well as in free trade agreements to which Croatia is party. The basic rules for acquiring preferential origin are almost identical to those in all protocols of origin and are in accordance with the basic principles of the pan-European rules on origin (but Croatia is not yet included in the pan-Europe-Med system of diagonal cumulation of origin).

Croatia does not grant autonomous preferences, but goods originating in Croatia benefit from the General System of Preferences (GSP) in eight countries.

Binding origin information is issued by the customs authorities upon request from the applicant and remains valid during three years.

Mutual administrative assistance & International customs cooperation

Croatia is member of a number of international conventions, such as Kyoto, harmonised system, Istanbul, international transport of goods by road – TIR, harmonisation of frontier control of goods. Croatia has concluded customs cooperation agreements with a number of countries: 5 Member States (Hungary, the Czech Republic, Italy, Slovakia, Slovenia) and 6 other third countries (Bosnia and Herzegovina, Turkey, Albania, Moldova, the government of the Republic of Montenegro and the government of the Republic of Serbia).

Croatia participates in the mutual assistance with the EU Member States in accordance with the Protocol V to the Stabilization and Association Agreement.

II.b. Administrative and operational capacity

Administrative organisation

The Customs Administration is an administrative organisation within the Ministry of Finance of the Republic of Croatia. It employs all together 3,089 officers and employees and consists, in addition to the headquarters, of 109 customs offices and 119 customs units (i.e. 147 border crossings, 51 inland customs offices handling goods and 30 border crossings handling goods).

A Training Department has been set up in the Customs Administration, and consequently the Customs Training Centre and Regional Training centres were established in April 2005. The training program will comprise basic training for trainees and freshly employed officers and advanced training related to continuous professional education of all customs officers.

A Code of professional ethics for Customs Administration officers and employees has been prepared and presented for adoption to the Ministry of Finance.

Computerisation

The IT system of the Customs Administration was introduced in 1992.

In 1999 the new Customs Act introduced the Single Administrative Document (SAD) as Croatian customs declaration model, compatible with the EU customs declaration model. In order to be able to process SADs, were introduced a new reference system (coding systems, registry of authorisations), a new transaction system for processing of declarations and the record-keeping system from processed SADs. Since 2003, all customs offices are connected into a single Customs Administration telecommunication network and IT equipped.

One of the transactional application subsystems is the collection and accounting of the customs debt, which is almost completely automated. After acceptance of the customs declaration, the debt is automatically entered to the debtor. Customs debt balance for each customs debtor is available in real time.

A project on risk management started in the late 2003 and is still under way.

Croatia adopted the Act on electronic signature in 2002; however it does not apply to the customs procedures. Currently all documents still have to be presented in paper.

III. ASSESSMENT OF DEGREE OF ALIGNMENT AND IMPLEMENTATION CAPACITY

Overall, Croatia's legislation in the field of the Customs' Union (chapter 29) is well aligned with the EU *acquis*. Since its independence, it has adopted relevant provisions, has drafted legislation along the EU lines, and has put in place the administration needed for its implementation and enforcement. Croatia is also well aware of the areas where discrepancies between their legislation and the EU *acquis* still exist. During its screening presentation, the country has explicitly pointed at these differences.

Discrepancies in the legislation have been identified, notably in the fields on counterfeit, drug precursors and rules of origin. Croatia needs to set up plans to address these issues.

III.a. Customs legislation

General customs rules and procedures

The level of alignment is very high.

The following discrepancies with the *acquis* have been identified:

- the time limit for payment of customs debt is 30 days in the Croatian Customs Act, whereas this period is 10 days in the Community Customs Code;
- the forms of guarantees, the conditions and possibilities for reduced guarantee amount in case of comprehensive guarantee and the possibility for a waiver of guarantee (i.e. for shipyards) are not fully in compliance with the Community Customs Code;
- the provisions on the summary declaration are not aligned with the latest amendment to the Community Customs Code (Regulation 648/05 – which is not yet in force in the Community);
- a customs declaration can be revoked according to the Croatian Customs Act if the customs debt is not paid, whereas this is not possible under the Community Customs Code.

Cultural goods

(see also chapter 26 – education and culture, for reference to international UNESCO conventions)

There is a high level of alignment. Croatia will need to adapt its legislation to the amendments that are currently being made to the *acquis*.

To achieve full alignment, Croatia should:

- align fully with the Annex to Regulation no. 3911/92 (all categories, including the minimum age for each category and the financial thresholds); the annex should also make reference to the Combined Nomenclature;
- eliminate the procedure relating to the temporary export of cultural goods, as this is not foreseen in the EU *acquis*;
- conform in detail the licence form to the model set out in Annex I of Commission Regulation no. 752/93, as last amended by Commission Regulation no. 656/2004;
- fully respect the technical parameters for the licence form set out in Article 3 of Regulation no. 752/93 (the paper should weigh not less than 55 grams per square meter).

Cash control at the borders

The Croatian legislation is not aligned on the *acquis*.

The following discrepancies between the Croatian legislation and the Community *acquis* in the area of customs union have been identified:

- Croatian national legislation that regulate the taking in and out of cash across borders does not specifically determine all the details that are necessary for customs declarations, whereas these questions are regulated in the *acquis*;
- as regards the cash control intelligence, the Croatian legislation does not contain provisions concerning the distribution of information about declarations and the exchange of information between States, whereas such provisions exist in the Community;

Issues related to cash transactions and discrimination between residents and non-residents are examined under chapter 4 – free movement of capital.

Customs status of goods / transit

A good level of harmonization has already been reached, but the following differences between the Community *acquis* and the Croatian Customs Act have been identified:

- when goods in free circulation in Croatia are transported between two points in Croatia via a third country, a transit procedure is necessary in Croatia, whereas in the Community a status document (T2L) is issued to facilitate the re-entering process of Community goods;
- Croatia requires a transit procedure for goods declared for export at an inland customs office, which is not the case in the Community;
- the Community transit system (NCTS) is fully electronic, whereas in Croatia paper based documents are still required.

Procedures with economic impact

The level of alignment is very high.

The following discrepancies between the Croatian Customs Act and the Community *acquis* have been identified:

- as regards inward processing, the provisions on economic conditions are not harmonised with the *acquis* and the time limit allowed for inward processing is longer in Croatia (1 year) than in the Community (6 months);
- the equipment intended for activities in free zones is not subject to the payment of customs duties in Croatia, but is in the Community;
- contrary to the Community Customs Code, the Croatian Customs Act does not contain provisions on Category II free zones and free warehouses;
- ATA carnets are not accepted for postal traffic in Croatia, but are in the Community.

Security aspects of the Customs Code

No assessment can be made at this stage, since the provisions in question are not yet in force in the Community.

Counterfeit

The Croatian law is not aligned on the EU *acquis* currently in force. The main differences are the following:

- fees and securities are required in Croatia, but not in the Community;
- the Croatian law does not include goods that infringe supplementary protection certificates and plant variety rights, whereas EC Regulation 1383/03 contains provisions in these fields;
- transit and transshipment are not covered in Croatia, but are in the Community;
- postal parcels for non-commercial use and goods contained in traveller's luggage are not covered by the Croatian law, but are by EC Regulation 1383/03.

A draft new Regulation is in preparation in Croatia, which aims in particular at eliminating these differences. The adoption of this new Regulation is expected by mid 2006.

Drug precursors

The Croatian legislation is not fully in line with the *acquis*. In particular, the following differences have been identified:

- some provisions included in Community legislation (obligation for operators to report suspicious transactions, record keeping during three years, labelling) are missing in the Croatian legislation;
- the list of category 1 substances is incomplete;
- the Community legislation provides for import authorizations only for category 1 substances (such import authorisations are individual, i.e. they are applied for every consignment); in Croatia, there seems to be import authorisations for all categories (such import authorisations seem to be global, i.e. they cover several consignments).

Customs valuation

The Croatian legislation is to a large extent aligned on the Community *acquis*. The following differences have been identified:

- the exchange rates for foreign currencies are determined at a weekly basis in Croatia, compared to a monthly basis in the Community;
- the Croatian legislation does not provide for the use of simplified procedures for certain perishable goods, whereas such use is provided for (but not mandatory) in the Community Customs Code;
- in Croatia, the use of a DV 1 declaration is not obligatory when the value of the goods does not exceed € 5,000, whereas the threshold is € 10,000 in the Community.

Customs classification and tariff

The alignment is high as far as classification is concerned. However, certain provisions of the Combined Nomenclature (standard duty rate and favourable treatment by reason of the nature of the goods) are not contained in the Croatian tariff.

Croatia applies a zero duty rate on most of pharmaceutical products, which is not the case in the Community.

There is an important difference as regards the management of tariff quotas, since the Croatian legislation provides for the delivery of licenses prior to the actual arrival of the goods in Croatia, whereas in the Community the "first come first serve" principle is applied after arrival of the goods. Furthermore, in Croatia tariff quotas can apply to agricultural products only, whereas in the Community tariff quotas can apply to any product.

Duty relief

There is a relatively high level of alignment. The following differences between the Croatian legislation and the Community *acquis* (Regulation 918/83) are the following:

- the conditions for granting relief are sometimes stricter in Croatia than in the Community (for instance, customs duty relief for transfer of residence in Croatia may be used only once during the applicant's life, whereas such restriction does not exist in the Community); Croatia will need to modify such stricter provisions, because Community duty relief will become a right for any citizen upon accession;
- the duty relief provided for outside the customs legislation in Croatia (see point II.a.) does not exist in the Community; in particular, the Act on investment promotion should be assessed from the point of view of the competition (State aid) rules (see also chapter 8 – competition policy).

Rules of origin

The rules on the determination and proofs of non-preferential origin are very different from the Community ones and need to be brought in line. In particular:

- the concept of "last substantial transformation" is not used in Croatia and is replaced by a reference to "sufficiently worked products";
- the list of insufficient working or processing applies to all products, and not to textiles only as it is the case in the Community; moreover, the list is longer in Croatia than in the Community and applies even if the material used (e.g. packaging) is produced in Croatia;
- there is a specific rule to determine the origin of packaging (contained in the rules for tariff classification) that does not exist in the Community;
- universal certificates of the type used in the Community does not seem to be used in Croatia;
- the Croatian provisions regarding retrospective issue, duplicate and replacement of certificates of origin do not exist in the Community non-preferential rules of origin.

Croatian rules of origin in Croatian preferential trade relations with third countries cannot be fully brought into line with the Community ones since they are not part of their autonomous legislation. At this stage, it is only through bilateral trade relations between the EC and Croatia (the SAA) and the forthcoming introduction of a diagonal cumulation with other Western Balkan countries that preferential rules of origin will start being brought into line. On that point, the presentation during the screening has shown some remaining discrepancies between the Croatian and EC approach of the rules in their respective relations with third countries (Western Balkans, EFTA, CEFTA, Turkey) even if they are mainly based on the same pan-European model, notably:

- the prohibition of drawback is still not activated in the agreement between Croatia and the former Yugoslav Republic of Macedonia;
- accounting segregation is limited in Croatia to approved exporters, whereas such a limitation does not exist in the Community.

Mutual administrative assistance & International customs cooperation

As regards the agreements that Croatia has concluded with third countries, Croatia should confirm its readiness to bring first pillar provisions contained therein into compliance with the *acquis*, or to denounce them, if they are not compatible with the *acquis*.

III.b. Administrative and operational capacity

Administrative organisation

From the first day of accession, the Croatian customs administration will have to manage and control Croatia's borders, which will then be external borders of the Union, in the interest of the EU population and trade operators. As there is no Community customs administration in place, the customs *acquis* must be implemented in a homogeneous and harmonised way at any point of the border of the Union. This process is already well under way.

The Croatian customs administration must guarantee that the development and implementation of a revenue collection and management strategy will enable domestic and EU customs revenues to be accurately collected, accounted, disbursed, reported and audited, both nationally and by the EU. This requires Croatia to develop policies, systems, procedures, technologies and instruments compatible with the EU requirements and standards. The roles, responsibilities and links between the central and regional offices must be clearly defined. Croatia must also pay attention to the proper management and control of the high number of free zones in the country.

The Croatian customs administration will be requested to have in place all necessary facilities to develop straightforward and efficient customs control operations at ports, airports and land borders, and inland, capable of facilitating a flow of legitimate passengers and trade while ensuring collection of national and EU revenue and the social protection of national and EU citizens.

Computerisation

Accession to the EU requires that a number of customs procedures are fully computerised and that IT systems used by the customs administrations are inter-connected with EU systems.

As regards transit procedures, Croatia will have to ensure that its national transit IT system is compatible and inter-connected with the New Computerised Transit System in place in all Member States and the other contracting parties of the Convention on common transit.

With regard to tariff, Croatia will be required to inter-connect with several EU IT systems, which guarantee the correct application of the EU external tariff and of the EU commercial policy measures.

Investigation and enforcement systems and procedures must be computerised. Work has begun in this respect and needs to continue. In the Community, electronic declarations are sufficient, whereas in Croatia the declarant has to lodge a written declaration in addition to his/her electronic declaration.

Croatia at present does not have IT systems that can be inter-connected to the required EU systems. Croatia has recently developed a coherent strategy to develop EU-compatible IT systems, but needs to further develop its IT systems in order to allow the exchange of computerised data between the EU and the Croatian administration upon accession.